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424-7581

July 25, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments Requested on Petition for Expedited Rulemaking To Establish Reporting Requirements and Performance and Technical Stanards for Operations Support Systems -- RM 9101

Dear Mr. Caton:

Pursuant to the Commission's June 10, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of Hyperion telecommunciations, Inc.'s Reply Comments.

Please date-stamp the enclosed extra copy of these Reply Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

C. Joel Van Over
Michael R. Romano

Counsel for Excel Communications, Inc.

Enclosures

cc: International Transcription Service (1 copy)
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited Rulemaking	)	
To Establish Reporting Requirements and	)	**RM 9101**
Performance and Technical Standards for	)	
Operations Support Systems	)	
	)	

REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC.
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING

Hyperion Telecommunications, Inc. ("Hyperion"), by undersigned counsel, submits these reply comments in support of the above-referenced petition for expedited rulemaking by LCI International Telecom Corporation and the Competitive Telecommunications Association.

Hyperion is a facilities-based competitive local exchange carrier whose subsidiaries and affiliates are currently operating in or preparing to operate in twelve (12) states. Hyperion is authorized to provide local exchange service in states where subsidiaries of NYNEX, Bell Atlantic, Southwestern Bell Telephone Company ("SWBT"), BellSouth, and GTE are the incumbent local exchange carriers ("ILECs"). Hyperion's affiliates have signed nine (9) interconnection agreements with ILECs in the states of Kansas, Kentucky, New Jersey, Pennsylvania, Tennessee, Vermont, and Virginia.

The Commission Should Require Public Disclosure of OSS Information

The Incumbent Local Exchange Carrier ("ILEC") commenters uniformly oppose any rulemaking in the operation support system ("OSS") area on three basic grounds. First, they argue

that they are currently providing nondiscriminatory access to OSS functions. Second, they argue that OSS performance standards are the exclusive province of State commissions pursuant to negotiated/arbitrated interconnection agreements. Third, they argue that they are participating in industry fora dedicated to developing national technical standards for OSS interfaces, and that these industry initiatives should be permitted to proceed without Commission involvement.

None of these arguments detract from the threshold purpose of the Petition for rulemaking to require ILEC disclosure of internal performance standards and measurement criteria, and historical data sufficient to compare the provision of OSS functions to the ILEC itself and its end user customers on the one hand and to CLECs on the other. This information will speak volumes about whether ILECs are in fact providing nondiscriminatory access to OSS services and where nondiscrimination standards may be necessary. Significantly, most ILEC commenters fail to address disclosure, relying instead upon their *ipse dixit* argument that since they do not discriminate, no disclosure is necessary.

However, disclosure of ILEC OSS information is a predicate to reasoned rulemaking and will deflate the current disagreement between ILECs and CLECs concerning nondiscriminatory access to OSS functions. Moreover, disclosure is a prerequisite to the effective enforcement of nondiscrimination obligations imposed by the Communications Act of 1934 and the Telecommunications Act of 1996 amendments (the "Act"). *MCI Communications Corp. v. AT&T*, 512 U.S. 218, 230 (1994) (nondiscrimination provisions cannot be enforced without public disclosure of rates).[1/]

[1/] The Eighth Circuit in *Iowa Utilities Board v. FCC*, __ F.3d __, 1997 WL 40340 at 16 (8th Cir. (continued...)

The ILECs have closely guarded their OSS performance standards, measurement criteria and historical data. Even where interconnection agreements require some reporting, the reporting is limited, rarely fully comparative, the measurement criteria often do not accurately reflect the function measured, and the data is subject to manipulation. For example, installation intervals are typically based upon the interval between the firm order completion date ("FOC") and the actual installation data. However, if an ILEC cannot meet the initial FOC, it often simply establishes a new, later FOC. This distorts installation intervals, skewing the data to the ILECs' favor.

Moreover, ILECs consider performance information proprietary. This stifles the sharing of what little information is available with industry organizations, stifles competition on the basis of service quality, and undermines accountability. A public debate concerning appropriate performance measurement criteria and information sharing will not only enhance competition but will protect the public interest. Consumers should be aware of ILEC and CLEC obligations so that they too can expect accountability in service quality.

Moreover, statistical performance information rarely conveys the whole story. Certain provisioning is strategically critical to CLEC entry into local markets. In Hyperion's experience there are no performance standards, dependable procedures, or accountable points of contact for these strategic OSS functions.

1/ (...continued)
1997) affirmed the Commission's "authority to prescribe and enforce regulations to implement the requirements of section 251" including nondiscriminatory access to OSS functions. *See id.* at 19-21.

Hyperion Has Experienced Unreasonable and Discriminatory Treatment

Hyperion's efforts to achieve timely and orderly collocation in Bell Atlantic facilities has too often been an expensive and time consuming ordeal. In one case, Hyperion provided all required construction engineering information to Bell Atlantic in October 1996. Construction was completed by a Bell Atlantic approved contractor in February 1997. Although Bell Atlantic was kept apprised of the construction schedule, it did not order or install the fire retardant cable required to complete the placement of fiber optic cable. Nor did Bell Atlantic respond to Hyperion's multiple requests to schedule pulling of the fiber through the conduit. Even after Hyperion succeeded in contacting the purportedly responsible Bell Atlantic employee, he claimed, incredibly, that there was no fiber to pull. Then on June 26, 1997, Hyperion was directed to contact a different Bell Atlantic representative, contrary to its earlier stated procedures.

During subsequent meetings, in June 1997, Bell Atlantic questioned its own prior construction approvals based upon information provided by Hyperion in 1996. Then, Bell Atlantic decided it required Hyperion to rework certain pole attachments. This work had not only been completed by Hyperion seven months earlier, but the rework required conflicted with methods used by Bell Atlantic on adjacent poles. During Bell Atlantic's late inspection process it also questioned construction that complied with Bellcore procedures and criticized its own approved construction contractors. Finally, Bell Atlantic advised that it would be reviewing all other Hyperion collocation construction that had been completed for months or earlier approved by Bell Atlantic.

In summary, Bell Atlantic has substantially delayed Hyperion's collocation in several areas, has subjected it to fragmented and contradictory oversight, has questioned its own approvals, and has held Hyperion to different provisioning standards and intervals than it uses for itself.

Hyperion has also experienced provisioning problems in NYNEX's region. For example, NYNEX has unilaterally set an across the board installation interval of sixty (60) working days for installing collocation trunks in Vermont and elsewhere. This interval bears no relationship to how long it may reasonably take to provision these trunks. A more reasonable interval is 10–14 days, or somewhat more where outside plant facilities must be provisioned. Thus, while NYNEX does have a performance standard in this area, it is not only inherently unreasonable but will assure that NYNEX's statistics appear deceptively positive.

The Commission Has Clear Authority and a Statutory Mandate

The ILEC's argument that State commissions have eclipsed the field of regulation concerning OSS functions through their approval of interconnection agreements argues too much. Hyperion does not suggest, nor do other CLEC commenters, that this Commission should exercise exclusive jurisdiction in this area. Neither the adoption of disclosure obligations nor reasonable nondiscrimination standards would impair State commission jurisdiction.

State approved interconnection agreements certainly provide the contractual framework for access to unbundled network elements and wholesale service, including OSS functions. But they do not address the appropriate legal standards by which nondiscriminatory access should be judged. Indeed, it would be impossible to do so in the context of an interconnection agreement. Discriminatory treatment can occur in a multitude of ways, despite the most facially neutral interconnection agreement.

Moreover, State and federal regulation coexists in many areas, and is expressly contemplated by the Act and by the Commission's implementation of the Act in its Interconnection Order.[2/] The Act expressly contemplates Commission regulation to implement nondiscriminatory access to unbundled network elements (§ 251(c)(3)) wholesale services (§ 251(c)(4)), and collocation (§ 251(c)(6)). Thus, the Commission's Interconnection Order has provided the first step, State commissions have taken the second step, and it is now appropriate, based upon marketplace experience in the OSS area, for the Commission to further define the parameters of the Act's nondiscrimination obligations with regard to OSS on a nationwide basis.

Action in the early stages is particularly appropriate for several reasons. First, the nature of OSS services make them a potentially strong barrier to entry. CLECs cannot effectively enter the market and compete through the provision of competitively neutral OSS services without the cooperation of ILECs. However, as the Commission has noted, LECs have the "economic incentive to interpret regulatory ambiguities to delay entry by new competitors."[3/] Nowhere is this ability greater than in the OSS services area where CLECs operate largely in the dark and where the cost in terms of both resources and delay of fighting each problem on an *ad hoc* basis effectively impedes competitive services.

[2/] *See e.g., Interconnection Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499. at ¶¶ 133-137, ¶ 558 ("State should have flexibility to apply additional collocation requirements that are otherwise consistent with the Act.".

[3/] *Interconnection Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 at ¶ 558 (Aug. 8, 1996).

Second, the Commission is the only regulatory authority with jurisdiction over all ILEC regions and the only authority that can discipline ILEC collaboration. The States simply cannot perform this function.

For example, although ILECs are participating in industry groups dedicated to fashioning technical standards in the OSS interface area, the collaboration required by these groups may provide the forum through which ILECs formulate their own agenda for concerted action. Thus, while these groups offer the potential for valuable standard setting they could also be used to foster anticompetitive conduct. Commission oversight will serve to assure that these groups act responsibly to achieve the policy goals of the Act. The Commission that has been given the broad mandate to assure such coordinated planning:

> to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.[4/]

Thus the Commission is granted authority to:

> establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers to telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service[5/]

Clearly standards for nondiscriminatory access, and electronic interface planning in particular, fall within the purview of this authority.

[4/] 47 U.S.C. § 256(a)(2).

[5/] 47 U.S.C. § 256(b)(1).

Finally, without the influence of the Commission it is likely that various industry groups will propose or adopt conflicting standards that themselves will result in expensive infrastructure development and further barriers to entry. In other words, the Commission should not wait until battle lines have been drawn to act. Nor should it wait for nondiscrimination standards to develop through case law from inevitable enforcement and antitrust actions. The expense, delay and disparities in wealth among carriers make this method of standard setting an inadequate alternative. *See Turner Broadcasting System, Inc. v. FCC*, 117 S. Ct. 1174 (1997).

Hyperion therefore urges the Commission to interpret the Petition and all comments as an indication that LECs and CLECs are far apart on important issues concerning the meaning of nondiscriminatory access to OSS services and the appropriate direction for the development of compatible electronic interface for action based upon real time information.

Conclusion

Hyperion requests that the Commission begin its rulemaking by requiring public disclosure of performance standards, measurement criteria and historical data in the OSS area. This will assist the Commission in identifying those areas that require regulatory assistance to frame reasonable nondiscrimination rules and to identify the components of each OSS function that should be defined. Finally, Hyperion requests that the Commission taken an active role in assuring that national standards for electronic interfaces are adopted, implemented and tested to assure that the vision of

seamless and transparent transmission of information between and across telecommunications networks become a reality.

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Dated: July 30, 1997

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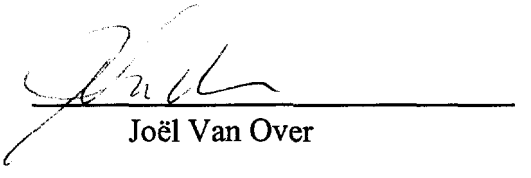
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Hyperion Telecommunications, Inc. In Support of Petition for Expedited Rulemaking on Operations Support Systems have been served this 30th day of July 1997 by first class mail, postage prepaid, or by hand delivery, to each on the attached service list.



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